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ABSTRACT

Written for purposes of furthering aid to the Association of Aroostook Indian (AAI) in procuring Maliseet and Micmac American Indian rights, this essay provides historical documentation of U.S. treaties verifying Native American rights. This essay asserts that although about 4,000 Micmacs and Maliseets live in New England (1,000 in Maine), they have not been formally recognized by the Federal Government and had not been given state recognition until the AAI was formed in 1967 and began to further their cause; that since they generally live off-reservation but do have reservations in Canada, they are often considered both Canadian and alien and are not, consequently, afforded government services. Arguing that these people are free to cross borders and are entitled to certain rights under a series of treaties established between the Indians and the U.S. during and after the American Revolution, this essay presents the historical basis for the following rights: (1) the right to come to the U.S. from Canada and to acquire employment without having to register as an alien; (2) full hunting/fishing rights comparable to those of other Maine Indians; (3) the right to settle on either Passamaquoddy reservation with due reservation rights; (4) full services comparable to those of other off-reservation Indians; (5) full rights of citizenship, including the right to vote. (JC)

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MALISEET AND MICMAC RIGHTS AND TREATIES

IN THE UNITED STATES

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Introduction

There are approximately 4000 Maliseet and Micmac people in New England. Of these, at least 1,000 reside in Maine. Like most other Eastern Indians, they have not been formally recognized as Indians by the Federal Government. In Maine, which has afforded "state recognition" to their brothers, the Passamaquoddies and Penobscots, they were completely ignored until the Association of Aroostook Indians was formed in 1967 to work for their development. The Maliseets and Micmacs have a two-fold problem in dealing with Maine and the Federal Government: first, they live off-reservation and the government generally does not provide services to Indians living off-reservation; second, their reservations are in Canada, and thus they are often called "Canadian". They argue that they are neither Canadian or American, per se, but Native North Americans, free to travel anywhere in the continent. These rights are guaranteed not only by the Jay Treaty of 1796 between the United States and Britain, which insured their bordercrossing rights, but also by a series of treaties between themselves and the United States which were entered into during and immediately after the War for American Independence. Indeed the Maliseets and Micmacs are entitled to much the same status as the Passamaquoddies and Penobscots in that they are parties to many of the same treaties.

Aside from the issue of Maliseet land claims, the Association of Aroostook Indians has identified five major "Indian rights" to which Maliseets and Micmacs residing in the United States are entitled:

1. the right to come into the United States from Canada and to acquire employment without having to register as an alien;
2. full hunting and fishing rights in proportion with other Indians in Maine;

3. the right to settle on either Passamaquoddy Reservation, provided the appropriate Tribal Council grants permission, and thereafter to receive all services due a member of that community;
4. full services in proportion with other off-reservation Indians when living off-reservation;
5. full rights of citizenship as guaranteed to all American Indians by the 14th Amendment of the Constitution, including the right to vote.

This essay will discuss the historical basis for these claims as well as the progress the Association of Aroostook Indians has made toward achieving them.

Maliseet and Micmac Participation in the American Revolution

The United States owes a great deal to the Maliseets and Micmacs for their friendship and military support during the American Revolution. Along with the Passamaquoddies and Penobscots they protected America's claim to all of northern and eastern Maine. This fact is clearly stated in Col. John Allan's letter of 1793 to Sam Adams (Kidder 313):

How far these people have complied with their engagements our present possessions, Eastward of Penobscot might be a sufficient proof, as it is acknowledged by all acquainted with that country that their assistance was a principle support in its defense.

Their Zeal & attention during the war...is so well known in that Country that it needs no comment. Their uniform conduct both in respect of humanity, as well as submitting with patience under every difficulty was not inferior to the most disciplined troops, & even when Imposed on at a time of Intoxication & fleeced of the little they had, they always sat down contented and resigned without any appearance of resentment or malice.

Allan reported that the Micmac tribe, the largest and most powerful of the Wabanaki tribes, alone could have defeated the Americans in the region, had they sided with the British. Yet they remained faithful to their commitments to the Americans, despite the fact that they were alternately cheated and raided by American traders and privateers (Kidder 294-5):

I would only observe that had the Indians followed the Example of these Plunderers & Illicit Traders...the whole Eastern Country as well as Nova Scotia, would very probably been in a State of Ruin & desolation or Lost to the States.

From the beginning of the War in 1775 the disposition of the four Wabanaki tribes, as well as their western allies', was of considerable interest to both the Continental Congress in Philadelphia and to the Provincial

Congress in Massachusetts, for the Indians held the balance of power on the northern and eastern frontiers. To the great surprise of the rebels, the Indians responded favorably to American appeals and from the outset provided valuable support to their cause. In September of 1775, after the Penobscot Governor Joseph Orono had returned from Massachusetts where he signed a treaty with the government there, the Maliseet Governor Pierre Tomah, and Second Chief Ambrose St. Aubin Bear declared their support for the Americans agreeing to the same terms the Penobscots had reached. Soon afterwards, a delegation of Maliseets and Passamaquoddies traveled to Massachusetts where they met with General Washington (Kidder 54-5).

In early 1776 these delegates returned to their home with a letter from Washington and a "Chain of Friendship". The letter and chain were received by the Maliseets in April or early May. The Whigs residing at Maugerville on the St. John River reported that "General Washington's letter set them on fire" (Kidder 66). The Maliseet reaction was so favorable that Major Francis Shaw was dispatched from the Fort at Machias to negotiate a treaty with them in June of 1776. Washington's correspondence was forwarded to the Micmacs by the Passamaquoddies during the spring of 1776. In answer to the letter, the Micmacs and Maliseets sent a delegation of 10 members to sit down with the American leaders in Watertown in July of 1776. During their visit they met several times with the Massachusetts Council and concluded a treaty of friendship and military alliance (Baxter 24:188-93). The agreement was ratified by the Maliseets but did not meet with the approval of the Micmac general council at this time for they felt that the Americans were unable to provide the support they promised. Nevertheless, when the American Col. Jonathan Eddy attacked the British Fort Cumberland in Nova

Scotia in the fall of 1776 he was accompanied by both Micmacs and Maliseets (Baxter 14:375-6).

The Micmac's fear that the Americans would not be able to live up to their side of the various treaties was not ill-founded. Throughout the second half of 1776 and for the rest of the war, the Americans were rarely able to provide fairly priced trade goods in sufficient quantity, upon which the Indians were dependent, as had been agreed in the treaties. Therefore Governor Pierre Tomah of the Maliseets traveled to Philadelphia with a delegation of his own tribe and of Penobscots to protest this situation. In March of 1777 the Second Chief of the Maliseets, Ambrose St. Aubin Bear traveled to Boston to complain about this same situation. Sensing the potential danger of the situation, Washington urged Congress to appoint an agent to deal with them and to insure their trade, for if the Americans could not live up to their trade agreements the Indians would be forced to turn to the British. For this reason the Continental Congress commissioned John Allan, a Nova Scotia farmer and fur trader, Superintendent of Indian Affairs for the Eastern Department. In his 1793 letter to Adams, Allan described the post (Kidder 311):

as the nature & Extent of the business was fully understood by the Several official departments to whom it was communicated, the agency appointed for this purpose comprehended the whole Eastward & Northward of Connecticut River, making no exceptions in what Nation or Country the Indians resorted.

Congress also gave Allan instructions respecting trade with the Indians (Kidder 181).

Early in 1777 Allan left Philadelphia for Boston where he began to formulate plans for the invasion of Nova Scotia. First he would secure the St. John valley with a force of 900 colonists and with the assistance of the Indian

people. Here he would set up his agency, build two forts, and state attacks into the eastern portions of the Province (Kidder 181). A key part of his plan was to make a strong treaty with the Wabanaki tribes. This he accomplished with the Maliseets and Passamaquoddies at a treaty convention at Aukpaque, a major Maliseet village at the present site of Fredericton, N.B. between July 12th and July 23rd, 1777 (Kidder: 105-6). In September 1777 the Penobscots also entered into this treaty (Kidder: 121, 234-5); Although the treaty document, itself, is lost, Allan described its contents to Samuel Adams in 1793 (Kidder: 311-12):

It was agreed and concluded that Peace & Friebdship be now Established permanent & lasting between the United States & the Several Tribes that such of them as were in the vicinity of the States should immediately withdraw and assist in the defense of the country which lay within the Jurisdiction of the United States. That any Indian individual belonging to those tribes whose Situation would not permit them publicly to take an active part were admitted to join with those who did. That those employed should be supported during their service & the widows & children of such as died in the time, to be taken care of till otherwise provided for. That they should be forever viewed as brothers & children, under the Protection & Fatherly care of the United States & enjoy every right and priviledge, according to the difference of situation in proportion with others. They should enjoy the free exercise of religion agreeable to their profession, a clergyman of that denomination be furnished and a suitable residence be provided for him, on which a place of worship was to be erected. They were to have exclusive right to the beaver hunt, or if not consistent with the rights of others, necessary steps were to be taken, as to prevent a destruction of the game & other enormities committed by the white hunters, by which conduct a great diminution of that ancient & profitable support has been the Consequences. That in times of difficulty & distress, or by any unforeseen claamity those who live within the Territory of the United States, should be furnished with ammunition for fowling & in proportion as their necessities. That trade was to be so regulated as to prevent imposition, that an agent should constantly reside as near them as possible, to whom they might apply for redress, & to assist in transacting of business among the Inhabitants & such other necessary matter as their situation required. (emphasis added by author).

These were the major agreements of the Treaty of 1777. Allan reported both the Passamaquoddies and Maliseets agreed to enter further agreements with the United States during the course of the war. Such agreements laid the groundwork for future land cessions to the United States in return for "the ancient spots of ground, which they have hitherto occupied, & a Suitable tract for the use of all Indians, which might have occasion to resort there" (Kidder 312). There is no evidence to suggest that the Treaty of 1777 or any of the subsequent agreements were ever formally ratified by the United States Congress. Allan, however, did negotiate with the consent of Congress and it is quite clear, as is shown below, that the Indian people acted in all good faith, believing that their treaties with America carried the weight of law. Letters from General Washington, Col. Allan, the Massachusetts Council, and reports about the stands taken by the Continental Congress could only confirm their belief.

The Treaty of 1777 was entered into under the threat of British warships anchored at the mouth of the St. John River. Governor Pierre Tomah argued against the treaty, citing the American's inability to keep their part; he argued for a stance of neutrality, for fear that the people lose their land completely should the British decide to invade. Allan countered that the Maliseet homeland could be taken back when the army being raised in Massachusetts to invade Nova Scotia arrived. Immediately after the treaty was signed, the British invaded and the Maliseets were compelled to evacuate their homeland, making a retreat up the St. John and over into Maine. Allen wrote "It is incredible what difficulties the Indians undergo in this troublesome time rather than become friends of the Tyrant of Britain" (Kidder: 117). After they reached Allan's headquarters in Machias the Maliseets were instrumental in defending the town against a British invasion. Shortly thereafter, they learned that General Washington had cancelled the plans to retake and fortify

the St. John River. In anger, Pierre Tomah returned to his homeland with twelve families to make amends with the British. For his part in the Battle of Machias, Allan was made a Colonel in the Massachusetts militia. For their part in the Battle, the Maliseets received the Praise and Thanks of the Massachusetts Council.

In the summer of 1778 the Micmacs declared themselves on the American side of the War after hearing that their old ally France was entering the War. On July 14, Col. Allan received a message from the Micmaca (Kidder 250):

three strings of Wampum, one from the Civil Chiefs, one from the Warriors to the Warriors to the United States, one for the King of France, Welcoming him into this country, to be an ally of America. They declared their zeal and attachment.../and stated that they were / ready when called upon to take up the Hatchet.

A week after three Micmac messengers arrived and Allan held a Grand Council with them, and the leaders of the Maliseets, Passamaquoddies and Penobscots. An attack was planned on the new British Fort that had been constructed at the mouth of the St. John. Allan dispatched a force of 90 canoes under the Maliseet Captain Nicholas Hawwawesh in August (Kidder 254). At the same time a force of 200 Micmac canoes was amassing in the Restigouch and Miramichi areas (Mac Donald 36). The attack was diverted by quick British troop movements and diplomatic maneuvers, and by the forceful leadership of Governor Pierre Tomah who interceded for the British, again arguing for neutrality. To make his point stronger, Tomah signed a peace treaty with the British in September. Most of the Maliseets and Micmacs returned either to their villages or to Allan's camp, unimpressed by Tomah's treaty.

The Micmacs and Maliseets continued to launch raids on British shipping and trading posts. In that the Micmacs were separated from the Americans they were more easily punished by the British. In August of 1779 the British

attacked the Micmac village on the Miramichi, killing and capturing a large portion of their fighting men. The chief fled and was declared a rebel. A new chief, sanctioned by the British was then installed whereupon a peace treaty was signed. With the Miramichi village for an example the British were able to get delegates from Miramichi, Richibucto, Restigouche, Windsor, and Shediac to sign a similar agreement in September of 1779 (Schoolcraft 6:677- Gesner 48).

In 1780 the British were able to bring even more pressure on the Maliseets and Micmacs. In June of 1780 a Grand Council was held on the St. John attended by Mohawks, Montagnais, St Francis Abenakis, Ottawas, and Hurons as well as the Wabanaki tribes. The Maliseets, Micmacs, Penobscots and Passamaquoddies, were told about the great suffering that their Western allies had undergone during the American General Schuyler's campaign into their homeland. They were warned by the Western Tribes that they were planning reprisal raids against the Americans and that they should "withdraw immediately, for they will be treated like the enemy if they remain with them" (Raymond 229). The Micmacs and Maliseets, however, refused to break away from the Americans. Rather, in July of 1780 all the Indians in Allan's Superintendency sent a large wampum belt to the Congress in Philadelphia and to the King of France, "as a pledge of their friendship & Fidelity" (Kidder 286). The belt was instead presented to the Provincial Congress in Massachusetts and to the French Consulate there by Allan's representative who stated that "the Belt is to be returned to them again with medals at each end, as tokens of accepting their alliance & Friendship." As requested the belt was returned with the proper medals attached (Papers of the Continental Congress, roll 71, 58: 59).

The events of the rest of the War appear to have been rather inconsequential, except that swindling by American Traders and depredations by American privateers against the Indians increased to disturbing proportions. Nevertheless, the Indians stood guard for the American cause. Governor Michael Augustine of the Micmac village of Richibucto was a good example (Kidder 294-5): in 1782 Allan wrote:

The conduct of this Chief and the Villages under his Immediate Care, is well known to many besides myself, during the War in opposing & threatening upon all occasions the British Government when attempting to Employ the Indians & do much in his Zeal, that even in the Country where the Britons have the Preeminance, no trader dares go among them, who does not Express Sentiments in favor of America.

The Treaty of 1794

On June 3, 1783, the Eastern Indian Superintendency was placed on a peace footing by Congress and shortly thereafter the military post at Machias was closed (Papers of the Continental Congress, roll 26, v. 19 p. 53). Allan reported (Kidder: 313-14):

At the close of the war, a circumstantial account of the Proceedings was laid before the Government of Massachusetts & Congress & approved by them. As the constitution invested the latter with the Management of Indian affairs, they of course fixed the agency on a peace establishment which comprehended as before the whole tribes Eastward of Connecticut River, the plan adopted would have prevented much trouble & expense and given security to the country, this appointment took place in June, 1783. In September it was communicated to the Indians in the several parts who signified their Satisfaction. The treaty of 1777 was then confirmed & an arrangement for future conduct.

Months passed however and no progress was made toward settling the Indian claims that had been confirmed by the Treaty of 1777. So on Christmas Day of 1783, a meeting was called at the Passamaquoddy village on the Skoodic (St. Croix) River. Attending were "several of the chiefs and young men of the St. Johns and Passamaquoddy Tribe of Indians. A number of Micmacs and Penobscots Tribes being present, and John Allan Superintendant of Indians, Eastern Department" (Papers of the Continental Congress, roll 71, v. 58, p. 59). Captain Nicholas Hawwawes, a Maliseet who appears to have ascended to the leadership of the "American party" after the death of Amborse St. Aubin Bear, addressed the assembly. He recounted the role that his people had played during the war and asked that they now be treated justly. Captain Hawwawes made it clear that all the Wabanaki people were united in this plea: "Brother, you know that messages have lately come from our brothers on the River St. John /and/ in the Micmac Country and you must know their minds. We don't meet here as ourselves,

but speak with the voice of all our brothers in those distant parts."

Allan left Maine shortly thereafter to report back to Congress. In February of 1784 he wrote a letter of encouragement to the Wabanaki people encamped at Passamaquoddy (Kidder 297-8):

Brothers: I have Transmitted to Congress the Great Council of this Nation, your last Speech, as well as what passed at our several Conferences when last at Passamaquoddy: they received it with glad hearts, & expect every Hour an answer, which will be delivered you Early in the Spring. Also the Great Council of the Massachusetts, and all your Brothers Westward, has a Love and Regard for you. They feel the Affection of Brothers, and desires and wishes nothing but your welfare, that you may Enjoy all your Rights & Privileges in as full & ample a manner as any of your Brother Citizens of the United States; and are determined to see Justice done in your Claims, as far as is Consistent with their Power & Authority.

In January of 1784, however, the Commonwealth of Massachusetts began to undermine Allan's Superintendency, protesting to Congress its reestablishment on a peace footing. For reasons that are not entirely clear, the Agency was dissolved in March of 1784. The Massachusetts government immediately set out to coerce the Penobscots out of their tribal territory. The Passamaquoddies, Maliseets, and Micmacs, however, were ignored; as Allan wrote to Sam Adams in 1793 (Kidder: 314): "It does not appear that any notice has been taken of them Eastward of Penobscot." Allan stated that this treatment was very costly to the Maliseets and Passamaquoddies (Kidder: 314):

The Indians notwithstanding the treatment & neglect, continued sometime in the vicinity of Passamaquoddy expecting when the confusion and hurry arising from the war were subsided, notice would be taken of them; but nothing encouraging coming to view they began to withdraw in small bodies to their former Settlements, destitute of necessaries to subsist, & of friends to protect them. In this indignant state, those of St. Johns suffered much & they felt the resentment of the Loyalist, for their attachment and assistance to the United States...

Thus both the United States and Massachusetts ignored the various treaties of the Revolution.

This situation was of course very disquieting to the Indian people and Allan reported they began to hold councils "respecting their situation still attached to this country, they repeatedly applied to me for a settlement". (Kidder 314). That the Indians were angered was also apparent to the settlers who began to invade the Indian's territory; in 1786 a rumor spread throughout Eastern Maine "that the Northern Indians meditated a blow upon our young Settlements" (Lincoln: 1787). Each year their protestations became louder; Allan reported (Kidder: 315): "That in January 1791, a message came from the Several Villages on the St. Johns & repeated their demands & delivered it in such a manner as alarmed me". This ultimatum resulted in a letter to the General Court of Massachusetts calling for a settlement and to the Bishop of Baltimore requesting a priest. A priest arrived in October of 1792 and in March of 1793 the Massachusetts General Court appointed Commissioners to meet with the Indians East of Penobscot. The meeting was held in October 1793, but Allan wrote that the Commissioner's power was limited that no satisfactory agreement could be made. In November of 1793 Allan who was one of the Commissioners was summoned to the St. John for further consultations. The Indians recounted:

"That Treaties & the promises made them...they demanded a fulfillment of these promises; particular lands for settlements which if refused they should view themselves free from all engagements & be at liberty to treat and accept of any Proposals made to them by any other Power & in future to pursue in their own way what they thought consistent with their rights and Interest".

They agreed however, to wait until February, 1794 for Massachusetts' answer (Kidder: 316).

On September 23, 1794 the final negotiation session for the 1794 treaty were begun in the vicinity of Passamaquoddy Bay. On that date

"the Indians assembled to the Number of Forty, comprehending principle characters of the Mallisheets, Passamaq. & Micmac Tribes, & some belonging to Canada" (Campbell, Allan, and Stillman p.1). The Indian solidarity was complete (Campbell, Allan and Stillman, p.2):

the Chiefs of Passamaquoddy & Marrisheete Tribes, delivered their speeches alternately. No distinction was observed, nor would they allow any settlement wherein they were not equally concerned, as well more residing in the Micmac Country & Confines of Canada

Again their principal complaints were put forth; in particular they complained (Campbell, Allan and Stillman, p.2):

That the Promises made in time of Warr, were not fulfilled particular that of Lands, for improvement and residence; tho they had resigned to the United States all Claims within the several haunts, on Condition of enjoying an Equal right with others.

They decried their treatment by traders, the destruction of the beaver hunt to which they had been promised exclusive rights and the deprivation of the "Rites of their Religion." The treaty that was concluded was acceptable to the delegates present. They then withdrew to the St. John to deliberate with those not present at the Convention. Allan reported that "since this conference, a large Council of the several Tribes have met at a distant Village, and in a solemn manner, Confirmed what had been done at Passamaquoddy, which proceedings were accompanied with strings of Wampum" (Report of the Commissioners). Allan reported that representatives of this Council returned to Passamaquoddy on November 24th. Three speeches were delivered by the Indian representatives: Jack Querrien, an old chief spoke for "the Indians of the Marrisheet & Micmac Tribes, residing on St. John River & other parts adjacent"; Johnnot Dennie of Passamaquoddy spoke, stating that they had been unable to confirm the treaty

until going to the St. Johns, "because it is our Custom never to do it without the knowledge of all the young men, as well as Chiefs"; finally, Francis Joseph Neptune, the Passamaquoddy Governor and Revolutionary War Hero, spoke "for all the Tribes" (Allan Ms).

It is clear from the various speeches that the 1794 treaty was seen by the Indians as a confirmation and elaboration of previous treaties with the United States and Massachusetts. Over and over statements were repeated about maintaining peace and friendship with America. The Massachusetts Commissioners viewed the treaty as providing considerable military protection for the Eastern settlements from the British. The Indians also made frequent references to the beaver hunt which were included in several agreements. Particularly significant is the statement that they had previously jointly placed their land under the protection of the United States and had laid the groundwork for land cessions after the War, provided that certain areas be set aside for their use and that they would enjoy an "Equal right with others".

The Issue of Canadian Indians

The Treaty of 1794 officially recorded the parties to the agreement as the Commonwealth of Massachusetts and the Passamaquoddies and "all those connected with them". That this phrase included Micmacs and Maliseets is incontrovertable from the evidence presented above. Indeed, Allan reported after the 1793 conferences (Kidder: 317-8):

it may be seen that there is no distinction to be made [] between the various tribes [], but if there was, the Passamaquoddy Tribe comparatively have the Least Claim, both as to numbers & attention in time of difficulty, & in the Late Transaction there were five others to one of them.

The names of the Maliseet and Micmac tribes were left out of the 1794 treaty because the majority of Massachusetts commissioners believed they had "no right to negotiate with Indians, that don't live within the Jurisdiction of the States; "it was probably this belief that stymied the negotiations of 1793 (Kidder:318). By a resolve of June 26, 1794, however their authority was clearly expanded to include other Indians connected with the Passamaquoddies (Wright & Potter:197).

The issue of "Canadian Indians" has been raised many times by those who wished to exclude Micmacs and Maliseets from any services available to Indians in the United States since 1794. It is clear that the term has been applied in an arbitrary manner, in contradiction to many treaties and agreements. In 1793, Col. Allan was the only one of the Commissioners who denied the relevance of this issue. He explained in a letter to Samuel Adams the position that was soon adopted by the Massachusetts General Court (Kidder: 318):

But this sentiment I never heard advanced before, either by the French, English or any other nation. Indians are not subject to, or amenable to any power; they have been always viewed as a distinct Body, governed by their own customs & manners, nor will they ever tamely submit to any authority different from their own, while they remain in the present uncivilized state. Their mode of life leads them thro' the Territory of different nations, their residence uncertain & Changeable, that it can not be known where they really belong except that they were born in such a district & may be called by the name of the tribe. I presume that at every treaty & conference with the United States a large proportion live upon lands, to which our Government have no claim, & I know this to have been the case with the French & English. It is not the right of soil or the claiming a Jurisdiction that should be contended for, nor to prompt them to acts of Hostility against any nation or people: but to secure their amity & Interest to prevent those horrid scenes of revenge & cruelty to which they are accustomed. I am fully persuaded that every Nation who are subject to depredations from them have a right & authority to Cultivate their Friendship, & pursue for that purpose every measure by negotiations or other methods, either in the country where they reside, or any other place agreed on (provided it does not disturb the peace & quiet of the civilized Subject), in order to guard against & ward off such evils, as much as to defend themselves against the Wolf or Bear. For should the former doctrine be established, the Eastern Country must be in a ruinous Situation, as there can be no Indians to treat with in the Eastern department, but those of Penobscot, for even those of the Passamaquoddy tribe now reside mostly within the British lines.

From Allan's explanation it should be clear that the 1794 Treaty was intended to be more than a land cession. It was intended to join two peoples in friendship. It provided safety to the colonists in return for certain rights for the Indians whenever they came to the United States.

There are several points stated by Allan above that may be easily expanded upon for there is significant information available. These points will be taken in this order: intertribal social cohesiveness and mobility of the Wabanaki tribes: the Wabanaki Confederacy; and other treaties that deal with "Canadian Indians".

The term Wabanaki is generally used to denote all the Algonkian people of northern New England and the Maritime Provinces. Today the primary tribes

in this grouping are the Micmacs, Maliseets, Passamaquoddies, and Penobscots. These tribes are culturally and linguistically very similar, both because they historically come from the same stock and because they have had extensive relations with one another. As Col. Allan explained (Kidder: 308-9):

"A correspondence & intercourse have been opened a long time, through the several tribes...& I can assert from authority that an Indian can hardly be found past 30 years of age but is acquainted and known within this circle. The very easy conveyance by the Lakes, rivers and streams so interspersed in this Country, they can easy take their women, children & baggage, where ever their Interest, Curiosity, or caprice may lead them, & their natural propensity for roving is such that you will see families in the course of a year go through the greatest part of this extent. This of course brings on a nearer Connection by Inter-marriages which is now become universal, particular as far as Merrimichi & St. Francis, so much that I well know that numbers which I had in the War are now residents in Canada & other distant parts, and many from thence are now living at St. Johns, Penobscot, Passamaquoddy. Thus connected there appears no distinction in the right of the several hunting grounds, for all by some tie or other have an equal claim, are fully domesticated as if natives of the district."

This social cohesiveness was reflected in a political union known as the Wabanaki Confederacy which united the various Wabanaki tribes; (there is considerable literature on this subject, see Bear 1966, Prince 1897 and 1921, Speck 1915). Allan noted (Kidder: 300) that "the Same privileges are observed in Council in peace or war, whether in a local or general assembly, the result you will hear of at a most distant part in a 'short time". The Wabanaki Confederacy had a comprehensive set of laws that were designed to insure the continued political and social cohesiveness of the Wabanaki tribes. These laws included the installation of new chiefs which required the participation of distant villages, marriage, the declaration of war, and the regulation of hunting territories. The Wabanaki Confederacy continued to be a viable organization well into the 19th century. In 1847, for instance, Gesner reported (115-6):

The Chiefs and Delegates of the Penobscots, Micmacs, and Malisites hold a council annually at Point Pleasant / Passamaquoddy Reservation / on the Saint Croix, where they renew their friendship and establish regulations for the public weal.

The Wabanaki Confederacy also provided some means for one tribe to intervene directly in the affairs of another, though this was sometimes very controversial. Thus in 1837 delegates from the Maliseet and Passamaquoddy joined with a faction of the Penobscots to impeach the Penobscot tribal Governor and Lieutenant Governor (Williamson 1846).

At Passamaquoddy the Wampum laws and treaties were recited as late as 1892 (Brown: 58) and among the Micmacs as recently as 1926 (Speck: 506). The Confederacy continued despite attempts by officials of the State of Maine to break it up (see letter of Gov. Hubbard to the Passamaquoddies, January 1852 in Record of Council Letters, Vol. 4:222-6).

It is clear from the description that the U.S. - Canadian border is completely irrelevant to Wabanaki intertribal relationships. The division between the Maliseet and Passamaquoddy tribes that the border created is particularly revealing. At the time of the revolution the Passamaquoddies and Maliseets were probably one tribe, whom the French called Etchemin and the Micmacs called Malesisik, from which the term Maliseet was derived (Lewey Mitchell speech). This nation appears to have had three major divisions: one at Passamaquoddy, one on the lower St. John centered at Fredericton, and one on the upper St. John near Madavaska. The unity of these groups is borne out both by the sameness of their language and by the testimony of many tribal members. Because of the border, however, the St. John River "Malesisik" were divided from the Passamaquoddy Bay "Malesisik" and that Micmac term only stayed with the former group. The greatest part of both the Passamaquoddies' and Maliseets' land is in Canada, and in fact the majority of both tribes lived in Canada in 1794. However, only the Passamaquoddies

have been considered "American" Indians. This confusion was created primarily by Americans who looked at the location of the tribal villages and reservations rather than at the location of tribal territory and residence. This situation is further muddled by the fact that the U.S. border was not settled until 1838 and the Webster-Ashburton Treaty. Before that time many Maliseet villages were indeed in the U.S. In 1821, for instance, Jedediah Morse conducted a survey of all the Indians residing in the United States for the Department of War. He recorded that there was a village of St. John Indians living at Meductec, which is now halfway between the Maliseet reservation at Woodstock, N.B. and the off-reservation settlement at Houlton, Me. (Morse: 64). As of 1825 Schoolcraft also reported the existence of some 300 St. John's Indians in the United States, although he had "no information as to their lands".

As Col. Allan suggested above, it was not at all strange for the United States to treat with Indians in Canada. The case of the treaty between the United States and the State of New York on the one hand and the Seven Nations of Lower Canada on the other provides a close comparison. The Seven Nations, like the Wabanaki Confederacy, was a group of Catholic Indians who had had strong ties with the French before their expulsion from power and with the United States during the Revolution. Also like the Wabanaki, their lands straddled the United States/Canadian border. The Wabanaki and the Seven Nations were allied through the Great Council Fire which convened every several years at the Mohawk Village of Caughnawaga outside Montreal.

There are several treaties involving the Seven Nations. The first was concluded on September 26, 1795 at Lake George by the State of New York (Hough: 134). This agreement was reviewed on March 26, 1796 in a letter from the U.S. Department of War and a new treaty convention was set up at New York City. The purpose of this convention was to allow New York to extinguish the bulk of claims of the Seven Nations within its borders.

President Washington appointed Abraham Ogden to be the Commissioner representing the U.S. New York sent several representatives who had been involved in the 1795 Treaty. The Seven Nations was represented by delegates from St. Regis and Caughnawaga, principle Mohawk villages of the Confederacy (Hough: 135). There was no question that these were "Canadian Indians". Caughnawaga is at Montreal, St Regis straddles the border and until the 1812 War, had a single Council operating on both sides. On May 31, 1796 a new Treaty was concluded by the American Commissioner and the Indians. The Treaty not only established the St. Regis Reservation but also accorded the payment of annuities to the Seven Nations (Hough: 145-6). In 1802 further negotiations were planned by the U.S. when the Senate appointed John Taylor to a U.S. Commissioner to treat with the Seven Nations, but at this time no agreement was reached (Hough: 152).

The Present Status of Maine's Micmacs and Maliseets

The Maliseets' and Micmacs' treaties have been completely ignored by both the federal and state governments. Indeed in 1852, Governor Hubbard of Maine urged the Passamaquoddies to sever their relationship with their brothers in Canada (Record of Council Letters 4:222-6): he wrote that the Indians in Canada

are controlled by the British Government, and their interests are different from yours and from ours...If you ask their advice and assistance, will they not ask you to give them some pay for it?...They are but men, they cannot heal your difficulties.

The Passamaquoddies did not comply with the Governor's request for they continued to believe in Indian unity as they do now. Some hope for the recognition of Micmac and Maliseet treaties, perhaps, can be found in Federal Indian Commissioner Louis Bruce's acknowledgement of the 1777 treaty (Bruce p. 2) and in the recent court successes of the Passamaquoddy Tribe. The limited Indian rights Micmacs and Maliseets presently enjoy in Maine, however, are based on three factors which are completely unrelated to their Revolutionary War Treaties and the Treaty of 1794: (1) the Jay Treaty of 1796 between the United States and Great Britain; (2) limited Maine legislation; and (3) recent administrative decisions at the state and federal levels.

The Jay Treaty of 1796 establishes the right of North American Indians residing in Canada to pass into the United States. This right was confirmed by Congress by law on April 2, 1928 (66 Stat. 234; 8 USC 1359) and was limited by an amendment passed in 1952 to Indians having 50% or more Indian blood quantum. In 1927 the courts determined that "Canadian Indians" could be considered as domestic labor for the purpose of agriculture (McCandless vs U.S. ex rel. Baibo (C.C.A. pa) 25 F 2d 7, 1927); this

ruling had the effect of excluding Micmacs and Maliseets and other "Canadian Indians" from the protections accorded bonded Canadians but denied domestic farm labor. For other sorts of work Micmacs and Maliseets are required to register as aliens. In 1970 the Maine Employment Security Commission ruled that a Maliseet Indian residing on a Canadian reservation was eligible for workmen's compensation benefits in Maine if he had fulfilled the requirements for them and if he considered Maine his labor market; the Commission stated (Decision #70 c 6): "While not necessarily determinative of the question, the fact that there are no restrictions on his entry to or exit from Maine is one of the factors".

Maine law also makes provisions that relate to Maliseets and Micmacs. Until the 105th Legislature Session, however, neither tribal name had ever been mentioned in legislation. The law defining an Indian as having at least $\frac{1}{4}$ Indian blood quantum covers Maliseets and Micmacs as much as any other Indians (Maine Revised Statutes, Title 22 Section 470). Likewise the law that provides for the reimbursement of towns by State General Assistance for giving welfare to a destitute Indian not a member of the Passamaquoddy or Penobscot tribes (MRS 22:4713) and the law that empowered local overseers of the poor to send Indians on welfare back to their reservations applied to Micmacs and Maliseets; the latter has since been declared unconstitutional. Both laws have been applied frequently in the past by local overseers, and the law for reimbursement of towns is presently in widespread use, although the A.A.I. has not been able to acquire complete figures on the amounts of money so spent on Indians in Maine. There is also a law relating to adoptions into the Penobscot Tribe which would make Micmacs and Maliseets eligible (MRS 22:471-3). There is no similar law for Passamaquoddy adoptions. The Legislature has regulated the internal affairs of the tribes

only when trouble was brewing over some situation; apparently Passamaquoddy adoptions has never been a problem for the Passamaquoddies as may be noted by the significant number of Canadian born Indians residing on their reservations.

During the 105th Legislature the A.A.I. attempted to see certain laws enacted that would confirm that Micmacs and Maliseets were eligible for certain services from the State. The A.A.I.'s first attempt was to have the Legislature enact a bill providing for free hunting and fishing licenses to Micmacs and Maliseets residing in Aroostook County. This bill failed primarily because of opposition from Penobscots who feared that their hunting and fishing rights would somehow be jeopardized. In the Special Session of the 105th, however, a bill did pass providing services to Micmacs and Maliseets. The bill, "Providing Scholarships to North American Indians Residing in Maine," defined that term to include Micmac and Maliseet Indians who have at least one grandparent holding a band number. Shortly before the passage of this legislation the University of Maine Board of Trustees enacted a new policy by which all Indians in Maine would be entitled to a waiver of all tuition costs, room, board, and fees when entering the University system. This was also a major step forward.

It has generally been the A.A.I.'s role to stimulate all resources available that might benefit Indians in Aroostook County, and in particular to assist Micmac and Maliseet people residing anywhere in the United States to acquire federal and state recognition of their various treaty rights and rights to services provided to other Indians. In the last three years the A.A.I. has received several grants from Federal agencies to carry on community development work in Aroostook County. Although this has not been earmarked Indian money, such federal assistance provides a sort of de facto recognition. The Association has also received favorable treatment at the

U.S. Bureau of Indian Affairs offices in Washington D.C. although no services have yet been forthcoming from the B.I.A. The Maine Department of Indian Affairs has assigned one worker, employed with Federal funds, to assist Aroostook County Indians.

One of the most important steps taken towards the recognition of Maliseet and Micmac people in the State of Maine has occurred in the area of education. On April 25, 1972 Governor Curtis wrote to A.A.I. President Terry Polchies, stating that he had directed the Supervisor of Indian Education to deal with the education needs of off-reservation Indians. "I see your need as great as those of the reservation communities," he said, adding that the Supervisor "could act as an 'official' advocate for you and the development of new programs would be done to meet the needs of all Maine Indians regardless of location". In October of 1972, Maine's Commissioner of Education and Cultural Resources, Carroll McGary, acted to give this effort more impact by asking the Maine Education Council to revive its Indian Education Advisory Committee to investigate the educational needs of Indian people in Aroostook County. This committee has met several times and has gained the trust of the Indian community.

A major determination the A.A.I. will have to make in the near future is how to acquire the status and services promised to the Maliseet and Micmac people in their several treaties made with the United States and the Commonwealth of Massachusetts in the late eighteenth century. One means might be through court action, but much research is still called for. It is hoped that this paper will stimulate others to provide legal opinions, additional historical findings, tactical suggestions which will be helpful to the A.A.I. in determining their future course of action.

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